

REMARKS/ARGUMENTS

Claims 1-14, 16-24, 34-35 and 38-40 are active. Claims 15, 30-33 and 36 and 37 have been withdrawn from consideration. The Brief Description of the Drawings has been revised as suggested by the Examiner and finds support in original Fig. 6. The claims have been amended for clarity. The amendments to claim 1 and new claims 38 and 39 find descriptive support in the original claims and on page 28 of the specification. No new matter has been introduced.

Restriction/Election

The Applicants previously elected with traverse **Group I**, claims 1-14, 16-24, 34, and 35, drawn to a method of increasing by recombinant means expression of *cd27a* in a plant or plant part, as well as plants, plant parts and genetic constructs. The requirement has been made FINAL. The Applicants respectfully request that the claims of any nonelected group which depend from or otherwise include all the limitations of an allowed elected claim, be rejoined upon an indication of allowability for the elected claim, see MPEP 821.04.

Objection--Claims

The claims were objected to as containing non-elected subject matter or for various informalities. This issue is now moot in view of the amendments above.

Objection--Specification

The specification was objected to as being incomplete in its brief description of Fig. 6 on page 34. This issue is now moot in view of the amendment to page 34 above.

Rejection—35 U.S.C. §112, first paragraph

Claims 1-14, 16-24, 34 and 35 were rejected under 35 U.S.C. 112, first paragraph, as lacking adequate written description. This rejection would not apply to the present claims which employ both structural and functional limitations to describe the claimed products.

Rejection—35 U.S.C. §112, first paragraph

Claims 1-14, 16-24, 34 and 35 were rejected under 35 U.S.C. 112, first paragraph, as lacking adequate enablement. This rejection would not apply to the present claims since no undue experimentation would be required to make and use the claimed products which are described by structural and functional limitations.

Rejection—35 U.S.C. §112, second paragraph

Claims 1, 2, 16 and 21 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite. This rejection is moot in view of the amendments above.

Rejection—35 U.S.C. §102(b)

Claims 1-5, 8-14, 34 and 35 were rejected under 35 U.S.C. 102(b) as being anticipated by Hemerly, et al., WO 01/02430. Hemerly does not disclose the step of selecting a plant having at least one modified phenotype selected from the group consisting of increased plant organ size, increased numbers of a plant organ, earlier flowering, or accelerated development compared to a plant obtained from the corresponding untransformed plant cell. Accordingly, it cannot anticipate claim 1 as amended or the new claims above.

While Hemerly refers to CDC27 polynucleotide sequences (page 25, line 37), transgenic plants (pages 26-27), dominant negative mutants of CDC27 (page 29, lines 12, ff.),

and particular prophetic transgenic plants having nematode resistance (page 30, lines 25-26), it does not contemplate a method involving the selection of plants having the particular phenotypes required by the present claims, nor transgenic plants *per se*, having these phenotypes. Accordingly, the Applicants respectfully request that this rejection be withdrawn.

Conclusion

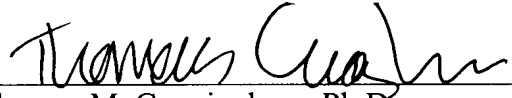
In view of the amendments and remarks above, the Applicants respectfully submit that this application is now in condition for allowance. An early notice to that effect is earnestly solicited.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.
Norman F. Oblon

Customer Number
22850

Tel: (703) 413-3000
Fax: (703) 413-2220
(OSMMN 06/04)



Thomas M. Cunningham, Ph.D.
Registration No. 45,394